IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.143 OF 2003

Shri Charles F. Pais,
resident of Golden Crest,
House No.41/9,
Ansabhat, Mapusa,
Bardez,Goa ... PETITIONER

VERSUS

1. State of Goa,
through its Chief Secretary,
Secretariat,
Panaji,Goa;

2. Land Acquisition Officer,
Public Works Department
(Cell), Altinho,Panaji,Goa;

3. Village Panchayat of Sangolda,
Sangolda, Bardez-Goa;

4. Smt. Vibhali V. Naik,
resident of Mae-de-Deus Waddo,
Sangolda,Bardez,Goa ... RESPONDENTS.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. N.K. Sawaikar, Addl. Government Advocate,for Respondents Nos.1 and 2.

Mr. A.P. Lawande, Advocate for Respondent No.3.

Mr. S.D. Lotlikar, Sr. Advocate,with Mr. A.D. Bhobe, Advocate,for Respondent No.4.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JULY 22, 2003.

ORAL JUDGMENT (Per **F.I. REBELLO,J.**)

The Petitioner initially had filed the Petition to quash the Notification dated 3-10-2001

under Section 4 of the Land Acquisition Act and Declaration under Section 6 dated 17-4-2002. On Affidavit having been filed by the Respondents setting out that the Award has been passed on 1-11-2002, the Petition has been amended to also include the challenge to the said Award and with the further direction commanding the Respondents to restore the acquired land. A few facts may be set out:

The Village Panchayat passed a Resolution at the meeting held on 30th July, 2000 to acquire land surveyed under No.97/22 and 97/23 for construction of existing road. In the Resolution it was set out that the said construction would benefit 17 houses and the expenditure would be borne by the Village Panchayat. A second Resolution came to be passed on 18-3-2001 whereby it was resolved to acquire the pathway as set out in the said Survey numbers which included Survey No.97/22 (part) and 97/23 (part). For the moment, we are not referring to the other Survey numbers. Based on those Resolutions and considering the material on record, administrative approval was granted by the Government by its Order dated 26-7-2001 for acquisition of 1275 square metres of land for the said purpose. Subsequent to that, Notification

under Section 4 came to be issued on 3-10-2001. The said Notification was published in the newspaper "Navhind Times" dated 7-10-2001. The Gazette Notification had been published on 8-10-2001 and in the daily "Pudhari" on 31-3-2002. The Petitioner and some others filed objections by their lawyer's Notice dated 29-10-2001. The receipt of those objections are not denied and as can be seen also from the records of the Land Acquisition Officer which has been produced before the Court. The declaration under Section 6 thereafter came to be issued on 17-4-2002 and was published in the Official Gazette, on 25-4-2002 and the newspaper daily Herald on 18-4-2002 and daily Navprabha on 18-4-2002. An Award thereafter came to be made on 1-11-2002.

2. In the Petition on behalf of the Petitioner it is contended that they had filed objections under Section 5-A of the Land Acquisition Act. Respondent No.1 has framed Rules under the Land Acquisition Act which are known as the Goa, Daman and Diu Land Acquisition Rules, 1972. In terms of Rule 4, sub-rule (2), read with sub-rule (3), it is set out that an objection has to be made within 30 days after the issue of Notification which must allege some specific objections. The Collector

on admitting such an objection and after giving the objector an opportunity of being heard, shall decide whether it is desirable to take oral or documentary evidence under Section 14 or Section 40. After that

rt has to be submitted to the Government. It is contended by the Petitioner that the objections raised amongst others were as under:

That the person who sponsored the Resolution or proposed the Resolution on 30th July,2000 Respondent No.4 is one of the occupants of the 17 hours mentioned in the Resolution. The Petitioner herein had filed suits against the Respondent No.4 for trespass in the property identified under Survey No.97/22 and 97/23 which is pending before the Civil Court. Reference is also made to earlier suit filed against the State Government for removal of water pipeline illegally put up in the land. It is then set out that the acquisition of the land amongst others of the Petitioner was illegal and malicious and instigated to subserve the whims and fancies of Respondent No.4. It was also set out that there was no link between Survey No.97/22 and 97/23 and the other plots which were acquired. It is, therefore, submitted that the Respondent No.2 was bound to conduct an enquiry under Section 5-A read with Rule

4. The Respondent No.3 has failed to exercise the statutory powers conferred on him and consequently the Declaration dated 17-4-2002 is null and void and consequently also all subsequent actions including the Award and taking of possession of the land.

In the grounds in the Petition it is specifically set out that acquisition is for the private benefit of four houses owners who are all related to Respondent No.4 by getting a road constructed at the cost of tax-payers. It is further set out that the other exercise for the proposed acquisition is that it is to settle personal scores between the Petitioner and the Respondent No.4. Though the road purports to be existing on the public footway, yet no acquisition has been proposed in Survey 97/29 The property surveyed under No.97/22 and 97/23 and the rest of the acquired property are separated by Survey No.97/29 which has not been acquired. It is therefore submitted that it is evident that no purpose, much less any public purpose, would be subserved by acquisition of Petitioner's property No.97/22 and 97/23. The insistence upon the acquisition is for reasons which are extraneous and irrelevant.

It is therefore submitted that considering the failure by the Respondent No.2 to comply with the mandatory requirement of Section 5-A read with Rule 4 of the Rules, the Declaration issued be declared a nullity in law and consequently quash and set aside the same and all consequential acts.

3. Affidavit has been filed on behalf of Respondent No.2 by Shri T.S. Sawant who has been working as Land Acquisition Officer since 23-10-2002. Preliminary objections have been raised that the Award was passed on 1-11-2002. Notice under Section 12(2) was issued on 16-1-2003 and the payment was made on 14-2-2003 to the interested parties and the possession has been taken over on 14-2-2003. In view of that, it is contended that the Petition is not maintainable and ought to be dismissed. It is then set out that the Petition involves mixed questions of fact and law. It is then set out that the Respondent No.3 had passed a resolution for construction of 3 metres wide road as the same was essential for the residents residing in the said area and also for free movement of vehicular traffic. To that resolution the Government of Goa granted administrative approval on 26-7-2001. The Panchayat then deposited the amount towards the approximate cost of the acquisition

whereupon the various steps taken for the acquisition under Section 4 and Section 6 and the publication has been set out. The 2nd Respondent it is pointed out sought the comments from the Block Development Officer vide letter dated 9-11-2001 over the notice dated 29-10-2001 received from Advocate for the Petitioner. Respondent No.3 submitted his comments by letter dated 4-12-2001. It is then set out that site inspection was carried out on 5-4-2002. The 2nd Respondent submitted his report under Section 5-A to the 1st Respondent and pursuant to that the Declaration under Section 6 came to be published. It is also then set out that representation of 13-2-2003 was received in the Office of the 2nd Respondent after the passing of the Award. The acquisition, it is contended, for constructing road will benefit 17 houses. Money has also been disbursed to the interested persons and in these circumstances it is pointed out that the Court should not grant any relief.

On behalf of Respondent No.3 the Sarpanch has filed an Affidavit. A preliminary objection is raised wherein it is contended that the Petition should be dismissed in limine as it is filed on 25-3-2003 much after the passing of the Award and after possession of the acquired land has been

taken. On this ground alone it is contended the Petition is liable to be dismissed in limine. In paragraph 6 the purpose for which the land was sought to be acquired is set out. It is then pointed out that the resolution for acquiring land were unanimous resolution and for public purpose to convert the existing traditional pathway into a public road as it was a felt necessity for the residents therein.

Respondent No.4 has filed an Affidavit. All that is set out therein is that resolution of 30th July, 2000 and 22-9-2001 were proposed by Respondent No.4 for conversion of the existing road into ap public road and the same was very much essential for the residents of the area. It is specifically denied that the acquisition was to target et the Petitioner by way of settlement of personal scores of animosity that had arisen between the Petitioner and the Respondent No.4. For all the reasons it is set out that the Petition ought to be dismissed.

4. Petitioner and Respondents have relied upon various judgments which will be adverted to in the course of the proceedings. From the records which have been produced before us what is clear is

that the acquisition excludes Survey No.97/29 which would have been the communicating link linking the two roads. As can be seen from the survey map as drawn at Exhibit F to the Petition the acquisition ends at a dead end on survey no.97/23. It serves one house which is situated in Survey no.97/22. The record also would show that notice under section 9 was not personally served on the Petitioner but done through publication on the land. The notice under Section 12 also from the records and more specifically the letter of 29-1-2003 addressed to the Land Acquisition Officer by the Mamlatdar of Bardez shows that 18 notices were duly served and 2 notices were unserved. Against the name of the Petitioner herein it is set out that he is residing at Mapusa. The next letter is a letter dated 5th February 2003 by the Land Acquisition Officer to the Mamlatdar drawing his attention to the provisions of Section 45, sub-section (3) of the Land Acquisition Act. There is the panchanama dated 13-2-2003 whereunder the notice under Section 12(2) is purportedly served on the Petitioner by pasting on the door of the known house of the Petitioner at Mae de Deus Vaddo of Sangolda village. From this it will be obvious that no personal notice either under Section 9 or Section 12 has been served on the Petitioner. In the award in para graph 2 the Land

Acquisition has observed as under:-

> "In pursuance to this Notification nobody objected to the Notification and a 5-A report was submitted to the Under Secretary (Revenue) vide this office letter No.10/464/2001/LAO-PWD/29 dated 11/4/2002 recommending the acquisition."

As we have noted in the earlier part of the Judgment, in paragraph 11 of the Affidavit of Respondent No.2 it is set out that the objections raised on behalf of the Petitioner and others through Advocate Kolwalkar were sent for the comments of the Block Development Officer vide letter dated 9-11-2001 and that, in fact, Respondent No.3 submitted his comments by letter dated 4-12-2001. This is clearly contrary to what is set out in the award.

5. With the above, we shall deal with the first contention as raised on behalf of the Respondents that the Petition should be dismissed on the ground that as the declaration under Section 6 has been issued, award has been made and possession has been taken the Petition ought to be dismissed. Reliance has been placed on various authorities for that purpose. In **Municipal Corporation Greater Bombay v. Industrial Development Investment Co.Pvt.Ltd. and others** [(1996)11 SCC 501] the Apex

Court, has observed that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the Notifications. In other words, it is not an absolute rule that the Court cannot interfere but it would depend on the facts and circumstances of each case. Normally if there was inordinate delay the Court shall not interfere. Let us see the various dates insofar as the present Petition is concerned. The Notification under Section 4 was issued on 3-10-2001, but can be said to be published in terms of Section 4 on 31-3-2002. The Petitioner filed his objections on 29-10-2001 which were received in the Office of Respondent No.2 on 31-10-2001. The Petitioner received a Notification from the Sarpanch on 22-1-2002 intimating that survey work for acquisition would be done on 28-1-2002. On 28-1-2002 the Petitioner addressed objections to the Director of Settlement of Land Records. On 21-2-2002 the Petitioner made a further representation to the Governor of Goa in the matter of illegal construction by the brother of Respondent No.4 in connivance with Respondent No.4. The declaration under Section 6 was published on 25-4-2002. The Petitioner addressed a representation to the Law Minister on 13-2-2003 and

filed the objection on 25-3-2003. The award in the instant case from the Affidavit of Respondent No.2 was published on 1-11-2002. Notice under Section 12(2) was issued on 16-1-2003. Payment not to the Petitioner was made on 14-2-2003 and possession had been taken over on 14-2-2003. Can it be said from the facts of this case that there is gross delay on the part of the Petitioner in moving this Court ? We have noted the earlier dates and we find that the Petitioner has represented to Respondent No.2 and to the other Authorities including the Law Minister as late as 13-2-2003. We have also noted that the Petitioner though had house in the locality, as can be seen from the records, was not served with a copy of either the notice under Section 9 or Section 12 as required under Section 45 of the Land Acquisition Act. In our opinion, therefore, on the facts and circumstances of this case, we do not think it proper to reject the Petition on that count. There is no long inordinate delay.

6. Having said so, the next question is whether this Court should strike down the Declaration under Section 6 and the consequential acts as also the act of taking possession. Let us, therefore, first consider the law on the subject insofar as Section 5-A of the Land Acquisition Act

is concerned.

The Apex Court in **Shyam Nandan Prasad and others** v. **State of Bihar and others** [(1993) 4 SCC 255] has held as under:--

> " That the compliance of provisions of Section 5-A is mandatory, is beyond dispute. See in this connection, **Shri Mandir Sita Ramji v. Ltd. Governor of Delhi and Farid Ahmed Abdul Samad v. Municipal Corpn. of the City of Ahmedabad.** Affording of opportunity of being heard to the objector is a must. The provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of Section 17 of the Act. But once Section 5-A is kept applicable, there is no cause to treat its provisions lightly or casually."

Let us see whether this proposition of law as laid down by the Apex Court and followed by the subsequent Judgments has been departed from by the Apex Court in the Judgments relied upon and cited at the Bar on behalf of the Respondents herein.

In **Tej Kaur and others v. State of Punjab**

and others [(2003) 4 SCC 485], the Apex Court noted its earlier judgment in **Shyam Nandan Prasad v. State of Bihar (supra).** Then went on to endorse the proposition but on the facts of that case found that the Collector had in fact conducted an enquiry under Section 5-A an enquiry though there was nothing on record to show that the appellants or any one of the appellants were heard in person. The Court then proceeded to hold that from the records it could be seen that the objections raised by the appellants was considered and partly allowed by the Collector. The extent of the land was then considered out of which only part of the appellants' land was acquired and held on those facts that objections filed by the appellants were considered and in those circumstances declined to interfere. In **Madhav Ramchandra Nanivadekar and anr. v. Special Land Acquisition Officer No.12 & Ors.** [1998(3) ALL MR 465], a Division Bench of this Court was considering the issue of not giving a personal hearing. The learned Division Bench in paragraph 13 of the Judgment observed that it is not obligatory on the Land Acquisition Officer to give personal hearing to the citizen in an enquiry under Section 5-A of the Land Acquisition Act when the citizen does not demand personal hearing though such an opportunity was offered to him. This judgment would clearly be

distinguishable considering Rule 4 of the Rules framed by Respondent No.1. Once the Respondent NO.1 has made Rules as to the manner in which the inquiry is to be held, Respondent No.2 could not have departed from the procedure laid down under the Rules. The Rule, as it stands, read with Section 5-A gives a right to a person whose land is being acquired, to have a personal hearing and as we have seen, further even to adduce evidence if on the facts and circumstances Respondent No.2 thinks it advisable to so do. A co-joint reading of Section 5-A with Rule 4 would make it clear that personal hearing would include an opportunity to a person aggrieved to be heard personally once objections have been filed and the objections fall in one of the categories as set out in Sub-rule (3) of Rule 4. The Respondent No.2 himself understood that the objection had to be considered by inviting the say of the Block Development Officer. In other words, Respondent No.2 did not treat the said objections as no objection which had to be entertained under Rule 4(3). There is, therefore, clear failure by Respondent No.2 to discharge statutory duty mandated upon him by law. The importance of Section 5 enquiry need not be spelt out. Once the State uses its power under eminent domain to dispossess a landowner, the law itself has mandated that before

such dispossession, an opportunity must be given to such person sought to be dispossessed as to why the purpose is not a public purpose or otherwise why the land should not be acquired. There is clear failure on the part of Respondent No.2 in discharging its statutory duties. The Respondent No.1 in issuing the declaration on the report which was forwarded in non-compliance of the mandatory requirements of Section 5-A read with Rule 4 would consequently be null and void.

7. Next we have to consider whether on the declaration under Section 6 being struck down whether the Award is liable to be set aside and possession restored. In our opinion, we need not set aside the entire Award as it will be clearly severable. Other Applicants are not before this Court and have not challenged the declaration under Section 6 nor the Award nor the taking possession of the land. Exhibit F as we have noted, clearly shows that the acquisition is on two sides which is separated by a Survey No.97/29. The Award, therefore, is clearly severable. In our opinion, therefore, the reliefs can be restricted only to the acquisition insofar as Survey Nos. 97/22 and 97/23 are concerned.

8. Considering the above, in our opinion, Rule is made absolute in terms of prayer clause (A) but limited to Declaration dated 17-4-2002, Exhibit "E" to the Petition and consequently prayer clauses (AA) and (AAA) only insofar as Survey Nos. 97/22 and 97/23 are concerned. In the circumstances of the case, there shall be no order as to costs. Possession to be handed over within six weeks from today.

F.I. REBELLO,J.

P.V.HARDAS,J.

ac.